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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

POLICE CHIEF SUPERINTENDENT VALFRIE G. TABIAN, POLICE CHIEF SUPERINTENDENT ADRIANO T. ENONG, JR.*, POLICE SUPERINTENDENT SIMNAR SEMACIO GRAN, POLICE INSPECTOR ARISTONE L. DOGWE, SENIOR POLICE OFFICER 1 ALLEN GLENN CADAG, POLICE OFFICER 2 MARK RIEL CANILON, AND JOHN DOES CONSISTING OF MEMBERS OF THE ANTIPOLLO CPS AIDSOTF AND PROVINCIAL SPECIAL OPERATING UNIT TEAM,**

Petitioners,

G.R. No. 247211

Present:

LEONEN, J., *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *** *JJ*.

- versus -

CHRISTINA MACANDOG GONZALES,
Respondent.

X-----X

Promulgated:

AUG 01 2022

DECISION

LOPEZ, J., J.:

This Court resolves the Petition for Review on *Certiorari*¹ under Rule 45 seeking the review and reversal of the Decision² dated November 26, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 00064 and its Resolution³ dated April 29, 2019, denying the motion for reconsideration filed by the petitioners, namely: Police Chief Superintendent Valfrie G. Tabian (*PC/Supt. Tabian*); Police Chief Superintendent Adriano T. Enong, Jr. (*PC/Supt.*

* Also referred to as Adriano T. Enong in some parts of the records.
** Also referred to as Allen Cadag in some parts of the records.
*** On leave.
1 *Rollo*, pp. 8-29.
2 Penned by Associate Justice Maria Elisa Sempio Diy with Presiding Justice Romeo F. Barza and Associate Justice Perpetua T. Atal-Paño, concurring; *id.* at 48-85.
3 *Id.* at 87-90.

Enong); Police Superintendent Simnar Semacio Gran (*P/Supt. Gran*); Police Inspector Aristone L. Dogwe (*P/Insp. Dogwe*); Senior Police Officer 1 Allen Cadag (*SPO1 Cadag*); Police Officer 2 Mark Riel Canilon (*PO2 Canilon*) and John Does consisting of members of the Antipolo City Police Station Anti-Illegal Drug Special Operation Task Force (*AIDSOTF*) and Provincial Special Operating Unit Team. In the assailed Decision and Resolution, the CA granted the Petition for Writ of Amparo with an Application for a Temporary Protection Order, Production Order, and Witness Protection Order in favor of respondent, Christina Macandog Gonzales (*Christina*) on February 17, 2017, following the death of Joselito P. Gonzales (*Joselito*), her husband, due to an encounter with law enforcement officers.

The records show that on July 5, 2016, Joselito died of multiple gunshot wounds after an encounter with police officers conducting a buy-bust operation under the direction of P/Insp. Dogwe and Police Senior Inspector Mark Gil Garcia (*PS/Insp. Garcia*).⁴

Antecedents

As enumerated by the CA, the original petition was directed against the following persons:

- 1) Rodrigo R. Duterte – President of the Republic of the Philippines;
- 2) Ismael Sueno – in his capacity as Secretary of the Department of Interior and Local Government (DILG);
- 3) Ronald Dela Rosa – in his capacity as Director General of the Philippine National Police (PNP);
- 4) Valfrid G. Tabian – in his capacity as Acting Regional Director of the PNP Regional Office IV-A;
- 5) Adriano T. Enong – in his capacity as Officer-in-Charge (OIC) of Rizal PNP Provincial Office;
- 6) Simnar Semacio Gran – Police Superintendent and OIC of Antipolo City Station;
- 7) Aristone L. Dogwe – Police Inspector and member of the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF), Antipolo City Police Station;
- 8) Allen Glenn Cadag – Senior Police Officer 1 (SPO1) from the Antipolo City Police Station;
- 9) Mark Riel Canilon – Police Officer 2 (PO2) from the Antipolo City Police Station; and
- 10) Members of the Antipolo City Police Station AIDSOTF and Provincial Special Operating Unit Team.⁵

Sometime in March 2015, Christina and Joselito were arrested for using and selling illegal drugs. The arresting officers at the time were petitioners PO2 Canilon and Marlon Olaco (*Olaco*). Christina and Joselito were

⁴ *Id.* at 50.

⁵ *Id.* at 49-50.

eventually released after allegedly paying PO2 Canilon the amount of ₱50,000.00.⁶

Months later or in August 2015, Olaco gave Joselito some *batong-bakal* to sell. These were drugs reportedly supplied by the police for resale. This transaction took place only once as Joselito and Christina were unable to remit the full amount of the proceeds of the sale.⁷

The following year, Joselito met Paulo Austria (*Austria*), who later became the driver of petitioner SPO1 Cadag, a member of the Antipolo police force. Later Austria introduced SPO1 Cadag to Joselito and Christina. Allegedly, SPO1 Cadag said he was looking for people to sell *batong-bakal*, and he assured the spouses that they would not be caught because he will protect them. Thus, Christina agreed.⁸

Sometime in June 2016, Austria and SPO1 Cadag went to Christina and Joselito's house to give her two bags of *shabu* worth ₱16,000.00 to sell. She was reminded supposedly by the police officer that they can kill women regardless of age, so she should be careful in selling illegal drugs and remit to them the complete and exact amount of the drug's worth as sales.⁹

That same month, police officers visited their house twice. The first time, PO2 Canilon and Olaco searched their house for illegal drugs, but they did not find any. Then, the police officers allegedly asked the spouses for ₱1,000.00 because they needed gasoline to visit a resort.¹⁰

On the second visit, the police officers arrived at their house to arrest Joselito for selling drugs. Joselito was aware of this plan and so was away at the time. However, he warned Christina who remained at their house. When the police officers arrived, she was met with threats by the police officers that when they find Joselito, they will kill him.¹¹

On July 4, 2016, Joselito suffered from stomach pain, so he stayed home together with Christina's mother, Basiledes Macandog (*Macandog*). On that day, Christina was out. Before 5:00 p.m. of the same day, Christina wanted to send an SMS¹² message to Joselito to update him that she was on her way home. Upon taking out her mobile phone, she noticed two missed calls from Christian Raye "Ian" Cleopas (*Cleopas*), a friend of Christina and Joselito and who was purportedly known in the area as a confidential agent of the police.¹³

⁶ *Id.* at 50.

⁷ *Id.*

⁸ *Id.* at 51.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² "Short Message Service."

¹³ *Rollo*, Vol. 1, p. 51.

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When Christina arrived home, Joselito was not present. Christina's mother told her that she witnessed Joselito leave with Cleopas, because the latter asked him to help drive and do a *lipat bahay* (a moving house) job. At the time, Christina's mother noticed that Joselito was only wearing a pair of shorts and a sleeveless undershirt or a *sando*. Allegedly, she told him to dress properly for the job. However, Joselito replied "*Isu-shoot lang naman din nila ako*" (They will just shoot me anyway.)¹⁴

Christina was nervous when she learned that Joselito accompanied Cleopas because she remembered that he was a police confidential agent. Moreover, Christina remembered the threats of the police officers to arrest her and her husband for selling illegal drugs.¹⁵

On the evening of July 4, 2016, Joselito did not come home.

The following day, Cleopas arrived at Christina's house looking for Joselito. Christina said "*Itinumba niyo na kaya hindi na siya nakauwi*" (You already killed him, that's why he did not come home.) Cleopas denied this and replied that he even paid Joselito ₱2,000.00 for the job he performed yesterday and insinuated that Joselito must have gone gambling with the money.¹⁶

When Cleopas left, Austria called Christina to tell her that a shoot-out occurred near White Cross, Taktak, Antipolo between the police and a civilian. In the aftermath, a dead body was brought to a funeral parlor. After learning of the shoot-out, Christina hurriedly went to the house of her father-in-law, Rogelio Gonzales (*Gonzales*), to ask Barangay (*Brgy.*) Chairman Ruco Picar for help. Together, they went to Heaven's Gate *Funeraria* and identified that the dead man was in fact her husband, Joselito.¹⁷

Joselito's body was brought to the funeral home on July 5, 2016. During his wake, Joselito's father, Gonzales, noticed several unknown and suspicious-looking people asking for the whereabouts of Christina. He also became wary of a car parked outside of the funeral home where two men intently observed the people attending the wake. Similarly, in the funeral convoy, Gonzales reportedly saw a man observing them. One of their relatives even stopped his motorcycle in front of the man and looked directly at him in the face, but the man avoided his gaze and walked away towards the direction of Femar Resort, Taktak Road, Antipolo.¹⁸

Because of the threats she received from PO2 Canilon and SPO1 Cadag, Christina was frightened that she would be killed next, so she went

¹⁴ *Id.* at 52.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 53.

into hiding. She neither saw the body of Joselito, nor attended his funeral. Joselito was subsequently buried on July 14, 2016.¹⁹ Up to the present, Christina alleges that the police officers from the Antipolo police force are looking for her.²⁰

On the part of the police officers, they alleged that on July 5, 2016, a buy-bust operation in Brgy. Dela Paz, Antipolo City was planned against a certain alias "*Tulis*" who was reportedly involved in the rampant selling of *shabu* in Sitio Bensonan, Brgy. Dela Paz, Antipolo City.²¹

At around 9:30 p.m., the joint elements of Antipolo City Police Station AIDSOTF and the Rizal Provincial Special Operating Unit team led by P/Insp. Dogwe and PS/Insp. Garcia, respectively, conducted the buy-bust operation against Joselito. During the transaction of the illegal drug, it was reported that Joselito sensed that the poseur-buyer was a police officer, resulting in him hurriedly running away and firing towards the police officers. The police alleged that they were forced to return fire, killing Joselito.²²

An After-Scene of the Crime Operations (*SOCO*) Report dated July 6, 2016 was prepared and submitted, along with an Investigation Report dated July 15, 2016 prepared by SPO4 Ian Albert G. Voluntad and noted by petitioner, PS/Supt. Gran. The reports found that there was unlawful aggression on the part of one *alias Tulis*, later identified and confirmed to be Joselito, and that the police officers only acted in self-defense and in the performance of their duties.²³

On February 21, 2017, this Court issued a Resolution²⁴ granting Christina's prayer for the issuance of a Temporary Protection Order and a Writ of Amparo which reads:

RESOLUTION

After reviewing the Petition and its annexes, the Court resolves as follows:

- (1) **ISSUE a TEMPORARY PROTECTION ORDER** prohibiting Secretary Ismael Sueno, Dir. Gen. Ronald De La Rosa, PC Supt. Valfrie G. Tabian, PS Supt. Adriano T. Enong, P Supt. Simnar Semacio Gran, P. Insp. Aristone K. Dogwe, Allen Cadag, Mark Riel Canilon and John Does consisting of Members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team and any of their agents from entering within a radius of one (1) kilometer from the residences and work addresses of the petitioner;
- (2) **ISSUE a WRIT OF AMPARO;**

¹⁹ *Id.* at 52-53.

²⁰ *Id.* at 212.

²¹ *Id.* at 10.

²² *Id.*

²³ *Id.* at 11.

²⁴ *Id.* at 191-193.

- (3) **REFER** the petition to the Court of Appeals (CA) for **IMMEDIATE RAFFLE** among the CA justices;
- (4) **ORDER** the respondents Secretary Ismael Sueno, Dir. Gen. Ronald De La Rosa, PC Supt. Valfrid G. Tabian, PS Supt. Adriano T. Enong, P Supt. Simnar Semacio Gran, P. Insp. Aristone K. Dogwe, Allen Cadag, Mark Riel Canilon and John Does consisting of Members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team to make a verified **RETURN** of the writ before the CA within five (5) working days from receipt thereof; and
- (5) **DIRECT** the CA to **IMMEDIATELY CONDUCT** the hearing on the petition and the other interim reliefs prayed for, and **DECIDE** the case within ten (10) days after its submission for decision.²⁵

On June 27, 2017, the Special Seventeenth Division²⁶ of the CA issued a Resolution, effectively dropping President Rodrigo R. Duterte (*President Duterte*) as a party-respondent due to the President's immunity from suit.

On July 20, 2017, Christina filed an Omnibus Motion²⁷ before the CA contending that Undersecretary Catalino S. Cuy (*Undersecretary Cuy*) of the Department of Interior and Local Government (*DILG*), Police Chief Superintendent Ma. O.R. Aplasca (*PC/Supt. Aplasca*) as incumbent Regional Director of Philippine National Police (*PNP*) Regional Office IV-A, and Police Senior Superintendent Albert E. Ocon (*PS/Supt. Ocon*) as incumbent Acting Provincial Director of Rizal should be added as respondents in view of the continuing threats against her life, liberty, and security.

On December 18, 2017, Christina filed a Second Amended Petition for Writ of Amparo with Application for Temporary Protection Order, Production Order and Witness Protection Order²⁸ which, among others, omitted President Duterte as respondent and added as respondents Undersecretary Cuy, PC/Supt. Aplasca, and PS/Supt. Ocon. This was later admitted.

Subsequently, the police officers against whom the Temporary Protection Order was issued filed their Return of the Writ²⁹ and Judicial Affidavits outlining their respective positions regarding the amended petition.

On March 2, 2018, Christina filed her Preliminary Conference Brief. The police officers filed their Preliminary Conference Brief (with Comment on [Respondent's] Preliminary Conference Brief) on August 31, 2018.³⁰

The police officers then filed a Motion to Resolve Petition Based on Affidavits to which Christina filed her Comment thereto. On November 12, 2018, Christina submitted her Judicial Affidavit³¹ reiterating her allegations

²⁵ *Id.* at 192-193.

²⁶ *Id.* at 55.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 68-69.

³¹ *Id.* at 69.

in her petition, and that of her mother, Basiledes, detailing when she last saw Joselito.

In its Decision³² dated November 26, 2018, the CA found that Joselito was a victim of extralegal killing, *viz.*:

WHEREFORE, premises considered, the Court hereby renders a Decision:

- 1.) **RECOGNIZING** the death of Joselito P. Gonzales as an extralegal killing.
- 2.) With regard to authorship:

DECLARING respondents Aristone L. Dogwe, Mark Riel Canilon, and John Does consisting of members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team who were part of the buy-bust team **RESPONSIBLE** for the extralegal killing of Joselito P. Gonzales.

DECLARING respondents Valfrie G. Tabian, Adriano T. Enong, Simnar Semacio Gran and their successors in office **ACCOUNTABLE** for the extralegal killing of Joselito P. Gonzales.

DECLARING respondents Allen Glenn Cadag and Mark Riel Canilon **RESPONSIBLE** for the threats of violation of petitioner's rights to life, liberty, and security.

- 3.) **RECOMMENDING** the filing of appropriate civil, criminal, and administrative cases against respondents Aristone L. Dogwe, Mark Riel Canilon, and John Does consisting of members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team who were part of the buy-bust team.
- 4.) **ISSUING** a **PERMANENT PROTECTION ORDER** prohibiting respondents Aristone L. Dogwe, Allen Glenn Cadag, Mark Riel Canilon, and John Does consisting of members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team who were part of the buy-bust team, and any of their agents from entering within a radius of one (1) kilometer from the residences and work addresses of petitioner Christina Macandog Gonzales.

SO ORDERED.³³

The CA found inconsistencies in the evidence presented surrounding the buy-bust operation that reportedly ensued. Specifically, the testimony of P/Insp. Dogwe of the fact that PS/Insp. Garcia was the team leader, ran contrary to the PRE-OPS/Coordination Report with Philippine Drug Enforcement Agency showing that the designated team leader of the operation was actually one PO3 Andres Ilagan.³⁴ Further, the Investigation Report dated

³² *Id.* at 48-85.

³³ *Id.* at 83-84.

³⁴ *Id.* at 73.

July 15, 2016 and the Spot Report dated July 5, 2016 contained no information as to who acted as poseur-buyers or backup personnel.³⁵ In addition, there was no information as to how, or at which point Joselito doubted or sensed the entrapment operation.³⁶ The police officers notably raised self-defense as a justification for the death of Joselito, but there was no information produced to show as to who among the police operatives were fired upon by Joselito, or who allegedly returned fire. Further, more details as to the location of where the encounter occurred were sparse, and the name of the road was not even indicated.³⁷

The CA also noted the failure of the police officers to observe the procedure before, during, and after the buy-bust operations indicated in the PNP Criminal Investigation Manual (Revised 2011) in the submission of various reports.³⁸ Thus, the CA was doubtful that the subject incident was a legitimate police operation, resulting in its findings that P/Insp. Dogwe, PO2 Canilon, and John Doe members of the Antipolo CPD AIDSOTF and Provincial Special Operating Unit Team part of the buy-bust operation are liable for the extralegal killing of Joselito.³⁹

Anent the questionable circumstances of Joselito's death, the CA upheld the narration of Christina in her testimony that police officers SPO1 Cadag and PO2 Canilon made threats in violation of her rights to life, liberty, and security as compared to the police officers' bare denials. Thus, the CA deemed the issuance of a Permanent Protection Order proper and held them liable for the same.⁴⁰

PC/Supt. Tabian, PS/Supt. Enong, and PS/Supt. Gran and their successors in office were likewise held accountable for the death of Joselito. The CA found that as superior officers, they failed to exercise that extreme care and caution in ensuring that the police operation was made in compliance with the applicable procedure, specifically in failing to provide the reports in the PNP Investigation Manual.⁴¹

No liability was attributed to former PNP Director General Ronaldo Dela Rosa (*General Dela Rosa*) for they found that despite the conclusion of the Internal Affairs Office, he actually directed the reopening of the

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 5.2.3 (2) of the PNP Criminal Investigation Manual (Revised 2011):

2. The Team Leader shall see to it that prior reports have been submitted which may include but not limited to the following classified reports:

- a) Summary of Information of the Target/s
- b) Special Reports
- c) Surveillance Report
- d) Contact Meeting Report
- e) Development Report.

³⁹ *Rollo*, p. 78.

⁴⁰ *Id.* at 79.

⁴¹ *Id.* at 74.

investigation of the incident. He also made a request for an update regarding the investigation in a Memorandum dated February 15, 2018. Admittedly the CA found no further information as to the results of this reinvestigation.⁴²

In the same vein, the CA did not hold DILG Secretary Ismael Sueno liable since under Section 13 of Republic Act (R.A.) No. 6975, it is the National Police Commission that exercises administrative control and operational supervision over the PNP and not the DILG.⁴³

Additionally, the CA no longer found necessary the witness protection order originally prayed for in Christina's petition, as it was stated in Christina's Rejoinder to petitioners' Reply to the Comment on Motion to Resolve the case Based on Affidavits) that she believed she was safe by virtue of the issuance of the Writ of Amparo and the Protection Order. The CA noted that the killing of Joselito was not witnessed by Christina herself.

Aggrieved, the police officers through the Office of the Solicitor General, filed a motion for reconsideration.⁴⁴ This was met with a Comment⁴⁵ filed by Christina.

In a Resolution⁴⁶ dated April 29, 2019, the CA denied the motion, thus:

WHEREFORE, premises considered, the "Comment/Opposition (to the Motion for Reconsideration dated 11 December 2018)" filed by petitioner is **NOTED**.

The Motion for Reconsideration filed by respondents is hereby **DENIED** for lack of merit. Our Decision dated November 26, 2018 **STANDS**.

SO ORDERED.⁴⁷

The CA found that the matters raised in the Motion for Reconsideration were mere reiterations of those judiciously passed upon and duly considered in its Decision dated February 19, 2019.

Hence, the petition before this Court.

⁴² *Id.* at 81.

⁴³ *Id.*

⁴⁴ *Id.* at 442-468.

⁴⁵ *Id.* at 472-490.

⁴⁶ *Id.* at 87-90.

⁴⁷ *Id.* at 90.

Issue

The question for this Court's resolution is whether the CA erred in finding that Joselito was a victim of extralegal killing and in holding the petitioners responsible for his death.

Our Ruling

Petitioners claim that the CA erred in issuing the writ of *amparo* in favor of respondent considering the totality of the evidence presented. They argue that the respondent merely averred that she was threatened by petitioners due to her fear that "she will be killed like her husband, Joselito." Respondent's account of the incidents, where several unknown and suspicious-looking people were observing and asking for her whereabouts during Joselito's funeral and afterwards, was improperly made the basis of the issuance of the writ, *sans* any evidence of absolute certainty that the same were the police officers involved in the buy-bust operation.⁴⁸ Moreover, it was alleged by petitioners that the issuance of a writ of *amparo* was not the proper remedy available to respondent since present laws provide ample recourse to her.

This Court is not convinced.

The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security.⁴⁹ In granting the issuance of the writ, the courts must consider the "totality of the obtaining situation" in determining whether a petitioner is entitled to a writ of *amparo*.⁵⁰

Section 1 of the Rule on the Writ of Amparo⁵¹ (*Amparo Rule*) provides:

SECTION 1. Petition. – The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

⁴⁸ *Rollo*, pp. 11-13.

⁴⁹ *Gen. Razon, Jr., et al. v. Tagitis*, 621 Phil. 536 (2009).

⁵⁰ *PNP Chief Ge. Razon, Jr., et al v. Tagitis*, 626 Phil. 581, 592 (2010)

⁵¹ A.M. No. 07-9-12-SC.

As defined in the case of *Mayor Mamba v. Bueno*, viz.:⁵²

Extralegal killings are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, enforced disappearance has been defined by the Court as the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State, or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁵³ (Citations omitted)

In an *amparo* action, the parties must establish their respective claims by substantial evidence or that amount of evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing, or violation that would warrant a finding of liability against the person charged.⁵⁴

In relation to this, Section 5 of the same rule enumerates what an *amparo* petition should contain, among which is how the right to life, liberty and security of the petitioner or on whose behalf the petition was filed, was violated or threatened, to wit:

(a) The personal circumstances of the petitioner;

(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs. (Emphasis supplied)

⁵² 805 Phil. 359 (2017).

⁵³ *Id.* at 377.

⁵⁴ *Id.*, citing *Rubrico v. Macapagal-Arroyo*, 627 Phil. 37, 69 (2010).

The writ shall issue if this Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty, and security of the aggrieved party was or is being committed.⁵⁵

The rights to life, liberty, and security, as protected rights under the rule on writ of *amparo* was discussed in the case of *Secretary of National Defense v. Manalo*,⁵⁶ in this wise:

The **right to security** or the **right to security of person** finds a textual hook in Article III, Section 2 of the 1987 Constitution which provides, *viz.*:

Sec. 2. The **right of the people to be secure in their persons**, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be **inviolable**, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge.

x x x x

While the right to life under Article III, Section 1 guarantees essentially the right to be alive - upon which the enjoyment of all other rights is preconditioned - the right to security of person is a guarantee of the secure quality of this life, *viz.*: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property... pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual.

x x x x

In the context of Section 1 of the *Amparo* Rule, "freedom from fear" is the right and **any threat to the rights to life, liberty or security** is the **actionable wrong**. Fear is a state of mind, a reaction; **threat** is a stimulus, a **cause of action**. Fear caused by the same stimulus can range from being baseless to well-founded as people react differently. The degree of fear can vary from one person to another with the variation of the prolificacy of their imagination, strength of character or past experience with the stimulus. Thus, in the *Amparo* context, it is more correct to say that the "right to security" is actually the "**freedom from threat.**" Viewed in this light, the "threatened with violation" [C]lause in the latter part of Section 1 of the *Amparo* Rule is a form of violation of the right to security mentioned in the earlier part of the provision.

⁵⁵ *Supra* note 52, at 380.

⁵⁶ 589 Phil. 1 (2008).

[T]he right to security of person is a guarantee of bodily and psychological integrity or security. Article III, Section II of the 1987 Constitution guarantees that, as a general rule, one's body cannot be searched or invaded without a search warrant. Physical injuries inflicted in the context of extralegal killings and enforced disappearances constitute more than a search or invasion of the body. It may constitute dismemberment, physical disabilities, and painful physical intrusion. As the degree of physical injury increases, the danger to life itself escalates. Notably, in criminal law, physical injuries constitute a crime against persons because they are an affront to the bodily integrity or security of a person.⁵⁷ (Emphasis added; citations omitted)

After an examination of the totality of evidence presented, this Court finds that threats to the life of respondent were present and the issuance of the writ of amparo was proper

Respondent had reason to fear that her life would be met with the same fate as that of her husband when she herself was involved with him in the selling of illegal drugs before.

In her judicial affidavit and petition for application of the issuance of the writ, respondent was able to clearly narrate her personal circumstances on how she and her husband were arrested for using and selling illegal drugs sometime in March 2015. To reiterate, the arresting officers at the time were petitioner PO2 Canilon and Olaco. Respondent averred that she and her husband were eventually released only after paying PO2 Canilon the amount of ₱50,000.00.

In August 2015, Olaco gave Joselito *batong-bakal* to sell, the transaction only taking place once, as respondent and her husband were unable to remit the full amount of the proceeds.

In another instance, respondent was threatened by Paulo and SPO1 Cadag when they engaged her to sell two bags of *shabu* worth ₱16,000.00. During the exchange, she was reminded by police officers, SPO1 Cadag and PO2 Canilon that they can kill women, old or young, so she should be careful in selling the illegal drugs they supplied her and Joselito with.

Such reminders to respondent were threats to her life, liberty, and security.

Further, the same police officers visited their house on more than one occasion with threats to entrap them. After Joselito's death, a result of the doubtful encounter with law enforcement officers namely with P/Insp.

⁵⁷ *Id.* at 48-52.

Dogwe, PO2 Canilon, and the John Doe members of the Antipolo CPS AIDSTOF and the Provincial Operating Unit Team, and the day after he was seen with the police officers' confidential agent, there were several unknown and suspicious-looking people during Joselito's funeral asking for Christina's whereabouts.

Still, petitioners lament that respondent was unable to prove that what occurred was a legitimate police operation. In support of this, they were able to present a list⁵⁸ of evidence to prove the circumstances surrounding the case.

Petitioners highlighted the fact that they submitted a Spot Report dated July 5, 2016, and an Investigation Report dated July 15, 2016 with the findings that during the buy-bust operation there was unlawful aggression on the part of alias *Tulis* and not the police officers.⁵⁹

The following is an excerpt from the Spot Report:⁶⁰

On or about the aforementioned time, date and place a buy bust operation was planned and executed wherein a covert police operative acted as poseur-buyer and that during the drug deal, suspects drug pusher became suspicious on the person he was dealing with, ran and allegedly pulled a firearm and fired his gun to the covert police officers.

Police operatives then upon being shot at retaliated which resulted to the neutralization of the suspect who sustained gunshot wounds causing his death while the other suspect/s managed to escape on board unknown motorcycle to the undisclosed area.

Yet, only later was this suspected person identified as Joselito. Prior to this, the identity of the deceased was unknown. Additionally, the record is wanting with sworn statements, marked money used, and other documents from any of the members of the buy-bust team narrating the facts and circumstances of the failed sale of illegal drugs.

In the Evidence Log under SOCO Report No: SOCO RCLO4A-(d)-398⁶¹ petitioners listed various items collected from Joselito, namely, one (1) revolver marked containing three (3) fired cartridge cases and two (2) cartridges and four (4) heat-sealed transparent plastic sachets containing white crystalline substance. The results of the investigation do show that a firearm was allegedly found in Joselito's possession and that it was unregistered. Along with it, four plastic sachets containing white crystalline substance were retrieved from him during the operation, yielding positive results for methamphetamine hydrochloride or *shabu*, a dangerous drug.⁶² However,

⁵⁸ *Rollo*, pp. 151-174.

⁵⁹ *Id.* at 91-125.

⁶⁰ *Id.* at 147.

⁶¹ *Id.* at 160.

⁶² *Id.*

taken collectively, there is a blatant disconnect in the evidence presented that would lead this Court to support the conclusion that what transpired was a legitimate buy-bust operation.

It remains unclear how or at which point Joselito sensed that the transaction was designed to entrap him, or how the shootout began. None of the members testified as to who among the buy-bust team members returned fire upon Joselito. Neither were there details presented as to the identity of the other suspect who escaped.

Moreover, no documentation was provided to show that the usual procedure under Section 21 of R.A. No. 9165 was observed when the illegal drugs were seized. Photographs of the seized items were taken, but these were not done in the presence of the required people enumerated by the law. No justification was provided as to why this was not done.

The lapses that transpired in the alleged buy-bust operation raises doubt as to the legitimacy thereof. Doubts exist as to whether a valid buy-bust operation indeed took place against Joselito.

Verily, the totality of the evidence presented by the respondent met the requisite evidentiary threshold of substantial evidence that would warrant the issuance of a writ of *amparo*.

Accordingly, this Court stresses that the step-by-step procedure outlined under R.A. No. 9165 as amended by R.A. No. 10640 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.⁶³ With major lapses in the prescribed procedure in this case, the presumption of regularity in the performance of the duties of the law enforcement officers is unavailing.

The failure of the petitioners to duly investigate is a violation of the respondent's right to and security

The Rule on the Writ of Amparo explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an *omission* of a public official.⁶⁴ In *Secretary of National Defense v. Manalo*,⁶⁵ this Court found that the right to security of a person includes the positive obligation of the government to ensure the observance of the duty to investigate:

⁶³ *People v. Umipang y Abdul*, 686 Phil. 1024, 1038 (2012).

⁶⁴ The Rule on the Writ of Amparo, A.M. No. 07-9-12-SC, September 25, 2007.

⁶⁵ *Supra* note 56.

Third, the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of Amparo, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of Amparo, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. **Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice.** The Inter-American Court of Human Rights stressed the importance of investigation in the **Velasquez Rodriguez Case**, viz.:

(The duty to investigate) **must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.** An investigation must have an objective and **be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family** or upon their offer of proof, without an effective search for the truth by the government.⁶⁶ (Citations omitted and emphasis supplied)

Foregoing considered, the petitioners, PC/Supt. Tabian, PS/Supt. Enong, and PS/Supt. Gran failed in their duty.

In the cases of *Roxas v. Macapagal-Arroyo, et al.*⁶⁷ (*Roxas*) and *Gen. Razon, Jr., et al. v. Tagitis*,⁶⁸ (*Razon*) this Court ruled that an Amparo petitioner's failure to establish by substantial evidence the involvement of the government in the alleged violation of the rights of a citizen is never a hindrance, for this Court can order the conduct of further investigation where it appears that the government failed to observe extraordinary diligence in the performance of its duty to investigate the complained abduction and torture or enforced disappearance.⁶⁹

This Court directed further investigation in the case of *Roxas*⁷⁰ because the modest efforts of police investigators were effectively putting

⁶⁶ *Id.* at 54-55.

⁶⁷ 644 Phil. 480 (2010).

⁶⁸ 621 Phil. 536 (2009).

⁶⁹ *Ladaga v. Maj. Gen. Mapagu, et al.*, 698 Phil. 525, 547 (2012).

⁷⁰ *Supra* note 67.

petitioner's right to security in danger with the delay in identifying and apprehending her abductors.⁷¹

Further, in *Razon*,⁷² this Court found it necessary to explicitly order the military and police officials to pursue with extraordinary diligence the investigation into the abduction and disappearance of a known activist because not only did the police investigators conduct an incomplete and one-sided investigation, but they also blamed their ineffectiveness to the reluctance and unwillingness of the relatives to cooperate with the authorities. In both of these cases, the incidents of abduction and torture were undisputed, and they provided the evidentiary support for the finding that the right to security was violated and the necessity for further investigation into such violation.⁷³

In the same case,⁷⁴ responsibility and accountability were defined as:

Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance.⁷⁵ (Emphasis in the original)

Insofar as accountability is concerned, this Court pronounced in a similar case:

The CA found that respondents Gen. Ibrado, PDG Verzosa, LT. Gen. Bangit, Maj. Gen. Ochoa, Col. De Vera, and Lt. Col. Mina conducted a perfunctory investigation which relied solely on the accounts of the military. Thus, the CA correctly held that the investigation was superficial, one-sided, and depended entirely on the report prepared by 1st Lt. Johnny Calub. No efforts were undertaken to solicit petitioner's version of the incident, and no witnesses were questioned regarding it. The CA also took into account the palpable lack of effort from respondent Versoza, as the chief of the Philippine National Police.⁷⁶

Again, the facts show that none of the required prior reports were submitted as stated in the PNP Criminal Investigation Manual.

⁷¹ *Id.* at 513.

⁷² *Supra* note 68.

⁷³ *Id.* at 635.

⁷⁴ *Supra* note 68.

⁷⁵ *Id.* at 553-554.

⁷⁶ *Rodriguez v. Macapagal-Arroyo, et al.*, 709 Phil. 380, 388 (2013) (Resolution).

Prior to closing the case of Joselito, it was stated in the Investigation Report⁷⁷ by PS/Supt. Gran, it stated that:

9. The critical issue to be resolved in this particular case is whether or not the use of force by the Police Officers in the armed confrontation that resulted to the death of **Joselito Gonzales alias "TULIS"** is just and does it [fall] under the principle of Self Defense.

x x x x

12. The **Police Officer clearly had acted on self-defense when he fired his gun at the suspect who threatened their lives with a gun** and must be absolve[d] from Administrative liability. The Court explains why a person who acted in self-defense must not be held criminally and administratively liable:

x x x x

15. Suspect did not give the Police Officers the chance to arrest him well and alive he *instead decided to shoot it out*, with intent to maim and kill with the [Police officers]. Suspect died in exchange of gunfire – *a fate he chose*. The Antipolo City AIDSOTF and Rizal PSOU men were not given a chance to arrest him but were met with gunfire when they chased him, and in that situation suspect posed an imminent danger to their lives and limbs.

x x x x

16. The suspect based on the foregoing facts who was armed with a handgun fired at the Police operatives, prompting the latter to fire back. **The unlawful aggression came from suspect aka TULIS and not from the Police**, who were in the performance of police operation and have only acted in self defense.

x x x x

17. It is [therefore] strongly recommend[ed] that the joint elements of Antipolo City Police AIDSOTF and Rizal PSOU be given appropriate awards for their courageous action.⁷⁸ (Emphasis and italics in the original)

After making the investigation report, petitioners PC/Supt. Tabian, PS/Supt. Enong, and PS/Supt. Gran closed Joselito's case without detailing the facts and circumstances that led to the failed buy-bust operation, shoot-out, and ultimately, his death. Additionally, the team leaders, P/Insp. Dogwe and PS/Insp. Garcia, along with the unnamed John Doe members of the buy-bust team were all exonerated on the basis of self-defense in this report.

No further action was commenced by the aforementioned police officers during their tenure in office and by their successors, despite directives to reopen investigation by General Dela Rosa till present day, evidencing their

⁷⁷ Rollo, pp. 144-146.

⁷⁸ Id. at 145-146.

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negligence to dutifully perform their duties as superiors, despite their defense that they were about to retire when the incident occurred during their term.

Their omission in failing to further investigate Joselito's case despite directives violated respondent's right to security and makes them accountable for the death of Joselito.

The fact that respondent and Joselito were previously arrested for selling illegal drugs is beside the point. As stated earlier, even if the respondent committed a crime, the petitioners, as law enforcement agents, are not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty and security.⁷⁹

In sum, this Court affirms the finding of the CA that petitioners P/Insp. Dogwe, PO2 Canilon, and the John Doe members of the Antipolo CPS AIDSTOF and the Provincial Operating Unit Team part of the buy-bust team conducted on July 5, 2018 are responsible for the extralegal killing of Joselito. Further, we recommend the filing of the appropriate civil, criminal, and administrative cases against them.

This Court also agrees with the finding of the CA that petitioners SPO1 Cadag and PO2 Canilon are responsible for threatening to violate petitioner's rights to life, liberty, and security. In line with the ruling in *Secretary of National Defense v. Manalo*,⁸⁰ in failing to conduct a proper investigation and reinvestigation during their tenure, PC/Supt. Tabian, PS/Supt. Enong, and PS/Supt. Gran, who served in their corresponding positions as Acting Regional Director of the PNP Regional Office IV-A, Officer-in-Charge (OIC) of the Rizal PNP Provincial Office and Police Superintendent and OIC of Antipolo Station respectively, are also accountable for violating the respondent's rights to life, liberty, and security as they failed to extend that protection provided under the law to victims of extralegal killings or enforced disappearances.

ACCORDINGLY, the petition is **DENIED**.

The Decision of the Court of Appeals dated November 26, 2018 and the Resolution dated April 29, 2019 in CA-G.R. SP No. 00064 are hereby **AFFIRMED**, namely:

RECOGNIZING the death of Joselito P. Gonzales as an extralegal killing.

⁷⁹ *Id.* at 489.

⁸⁰ *Supra* note 56.

With regard to authorship:

DECLARING petitioners Police Inspector Aristone L. Dogwe, Police Officer 2 Mark Riel Canilon, and John Does consisting of members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team who were part of the buy-bust team RESPONSIBLE for the extralegal killing of Joselito P. Gonzales.


DECLARING petitioners Police Chief Superintendent Valfrie G. Tabian, Police Chief Superintendent Adriano T. Enong, Police Superintendent Simnar Semacio Gran and their successors in office ACCOUNTABLE for the extralegal killing of Joselito P. Gonzales.

DECLARING petitioners Senior Police Officer 1 Allen Glenn Cadag and Mark Riel Canilon RESPONSIBLE for the threats of violation of petitioner's rights to life, liberty, and security.


RECOMMENDING the filing of appropriate civil, criminal, and administrative cases against Police Inspector Aristone L. Dogwe, Police Officer 2 Mark Riel Canilon, and John Does consisting of the members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team who were part of the buy-bust team.

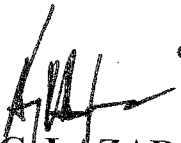
ISSUING a PERMANENT PROTECTION ORDER prohibiting petitioners Police Inspector Aristone L. Dogwe, Senior Police Officer 1 Allen Glenn Cadag, Police Officer 2 Mark Riel Canilon, and John Does consisting of members of the Antipolo CPS AIDSOTF and Provincial Special Operating Unit Team who were part of the buy-bust team, and any of their agents from entering within a radius of one (1) kilometer from the residences and work addresses of respondent, Christina Macandog Gonzales.

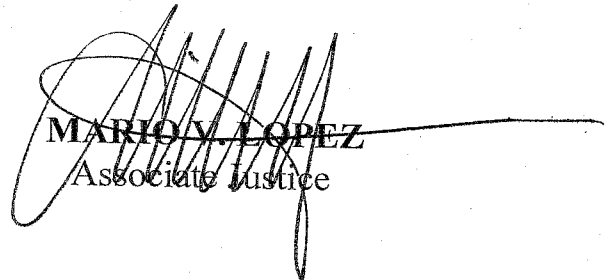
SO ORDERED.


JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

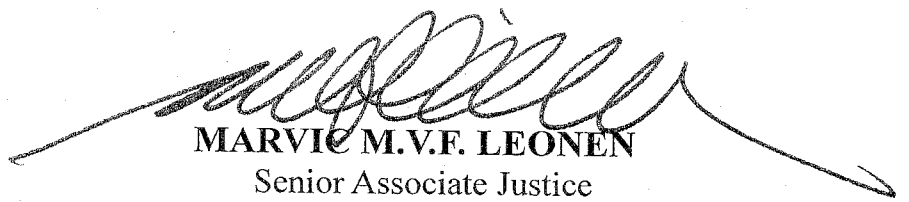

AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice

On leave
ANTONIO T. KHO, JR.
Associate Justice

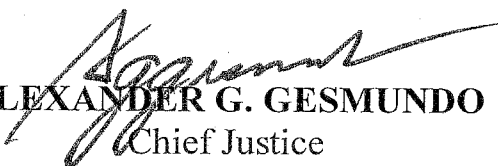
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice